

Residential Tenancies Tribunal

Decision 19-0652-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 07 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", participated by telephone.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$422.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 14 and 42 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. The tenant submitted an affidavit with her application stating that the landlord had been served with the application and notice of the hearing on 23 September 2019 by text-message. A copy of that text-message was also submitted by the tenant.

7. The landlord claimed that she had not received notice of the hearing as she had blocked the tenant on her smart phone. She requested a postponement as she had not been served with notice of the hearing.
8. The relevant subsections of section 42 of the *Residential Tenancies Act, 2018* state:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

- (a) a question arising under this Act or the regulations;***
- (b) whether a provision of a rental agreement has been contravened; or***
- (c) whether a provision of this Act or the regulations has been contravened.***

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

(3) The applicant shall serve the application submitted to the director under subsection (2) by

...

- (c) sending it electronically where***

- (i) it is provided in the same or substantially the same form as the written notice or document,***
- (ii) the other party has provided an electronic address for receipt of documents, and***
- (iii) it is sent to that electronic address; or***

...

(7) For the purpose of this section, where a copy of the application is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent before 4 p.m., or the next day that is not a Saturday or holiday, if the copy of the application is sent after 4 p.m.

9. As the application was sent to a telephone number that the landlord and tenant had been using to communicate with each other, I find that, even though the landlord claimed that she had not received the application, it nevertheless is

"considered to have been served" on the day it was sent and I therefore denied the landlord's request for a postponement.

Issue 1: Refund of Security Deposit - \$422.00

Relevant Submissions

The Tenant's Position

10. The tenant stated that she had entered into a rental agreement with the landlord in March 2016 and at that time she had paid a security deposit of \$860.00.
11. The tenant moved out of the unit in August 2019 and she stated that the landlord had only returned to her \$438.00 of the security deposit. She claimed that the landlord had kept \$422.00 of the deposit because of damage that she had accused the tenant of causing. She testified that she had not caused any damages to the rental unit.
12. The tenant stated that she had not entered into any written agreement with the landlord on the disposition of the security deposit.

The Landlord's Position

13. The landlord stated that the tenant had caused damage to the window cranks in the rental unit. She stated that after the tenant moved out she had sent her an e-mail containing photographs of that damage and containing a copy of a receipt for the costs of purchasing replacements.

Analysis

14. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

...

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

15. There was no dispute that the tenant had paid a security deposit of \$860.00 and that the landlord had only returned \$438.00 to the tenant.
16. The landlord had not filed an application to the director under either s. 14.(10)(b) or s. 14.(11) and I accept the tenant's testimony that she had not entered into a written agreement with the landlord on the disposition of the deposit.
17. As such, the landlord is required, as per s. 14.(12) to return the remaining \$422.00 of the security deposit to the tenant.
18. I informed the landlord at the hearing that if she believes that the tenant had caused damage to the rental unit for which she is entitled to compensation, she is not barred from filing a future application to the director.

Decision

19. The tenant's claim for refund of the remaining \$422.00 of the security deposit succeeds.

26 March 2020

Date

John R. Cook
Residential Tenancies Tribunal